



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	2/28/01	Bill No:	SB 1182
Tax:	Property	Author:	Senate Revenue and Taxation Committee
Board Position:	Support	Related Bills:	SB 882 (O'Connell) AB 1127 (AR&T)

BILL SUMMARY

This bill contains Board-sponsored provisions to:

- Correct cross-referencing errors. (Government Code §51296.3)
- Correct a typesetting error. (§749)

It also contains California Association of Clerks and Election Officials sponsored provisions to:

- Clarify which provisions relating to filing an assessment appeal apply to Los Angeles County and modify an incorrect reference to supplemental assessments. (§75.31, 534, 1605)

It also contains a Committee proposal to:

- Exempt a leasehold interest in a public park held by a charitable foundation that will acquire ownership of the park at the end of the lease term. (§236.5)

ANALYSIS

Farmland Security Zones

Government Code § 51296.3

Current Law

Each year, the Senate Local Government Committee authors a bill to correct problems with the statutes that affect counties, cities, special districts, and redevelopment agencies, as well as the laws on land use planning and development. These problems are relatively minor and do not warrant separate (and expensive) bills. Among its provisions, last year's Local Government Omnibus Act of 2000 (SB 1350, Ch. 506, 2000), in effect January 1, 2001, repealed former Government Code Section 51296, which included subdivisions (a) - (o), and replaced that one section with Government Code Sections 51296 -51297.4 (Farmland Security Zone). Before the enactment of SB 1350, the statute consisted of a single section with 15 separate subdivisions. SB 1350

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simply redistributed the farmland security zone statute from one section into 15 sections without changing the statute's substance. Basically, each former subdivision of Section 51296 became a separate Government Code section, such as follows:

<u>Former Section</u>	<u>Current Section</u>
Section 51296, subdivision (a)	Section 51296
Section 51296, subdivision (b)	Section 51296.1
Section 51296, subdivision (c)	Section 51296.2
Section 51296, subdivision (d)	Section 51296.3
Section 51296, subdivision (e)	Section 51296.4
Section 51296, subdivision (f)	Section 51296.5
Section 51296, subdivision (g)	Section 51296.6

However, former Government Code Section 51296, subdivision (d)(2) referred to exceptions provided in its subdivision (f) or subdivision (g). When it was repealed and new Section 51296.3 was added, the references to those subdivisions were not changed, so that now there are references to those subdivisions within Section 51296.3 that do not exist. Specifically, former Section 51296 (f) is now Section 51296.5, and former Section 51296 (g) is now Section 51296.6.

Proposed Law

This bill would correct the reference errors contained in Section 51296.3 in order to avoid confusion for taxpayers.

State Assessee Appeals

Revenue and Taxation Code §749

Current Law

Under current law, Revenue and Taxation Code Section 749 requires the Board to notify a petitioner by mail of its decision on a petition to correct an allocated assessment.

Last year the Board sponsored legislation amending various sections of code to simplify the petition filing deadlines for appeals of assessments and allocations of state-assessed properties. (SB 2170, Ch. 647, Stats. 2000) One word in the original source documents provided to the Legislature was typeset incorrectly when the amendments were set into formal bill introduction form. Specifically, in Section 749, the word “allocated” was mistakenly typeset as “unallocated.” Presumably the word “an” prior to the word “allocated” was double typeset as both “an” and “un” and the mistake was not discovered until after the bill had been chaptered. The language adopted by the Board and subsequently delivered to the Legislature uses the word “allocated.” Additionally, since there is no such thing as petitions for “unallocated” assessments, this sentence requires correction.

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Proposed Law

This proposal would correct this typesetting error.

Assessment Appeals – Assessments Outside the Regular Period

Revenue and Taxation Code §75.31, 534, 1605

Current Law

Under existing law when a taxpayer receives a *notice* of changed assessment with respect to an assessment made “outside the regular assessment period” (supplemental assessments, escape assessments, and penal assessments) for which the taxpayer wants to challenge the assessment, he or she must file an appeal application within 60 days of the date of the mailing of the notice. The “date of mailing” is printed on the notice. In Los Angeles County and any county that adopts a special ordinance, taxpayers have a longer period to file an appeal, which is within 60 days of the mailing of the *tax bill* rather than within 60 days of the notice that precedes the tax bill. Under amendments added to Revenue and Taxation Code Section 1605 last year, (SB 2170, Ch. 647, Stats. 2000), in those counties where the taxpayer must file an appeal within 60 days of the notice, the law was amended to give taxpayers more time to file an appeal if they did not *receive* the notice at least 15 days before the 60 day period expired. Specifically, those taxpayers may then also file within 60 days of the mailing of the tax bill.

Proposed Law

The recent amendments are unclear as to which counties the new law applies. This bill is intended to recast and clarify the recent amendments. Additionally amendments to Section 75.31 and 534 clarify which provisions apply to Los Angeles County. And Section 534 is amended to delete an incorrect reference to supplemental assessments.

Comments

These amendments are intended to provide clarity and certainty for taxpayers and tax practitioners.

Leased Public Parks

Revenue and Taxation Code Section 236.5

Current Law

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” (*Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7*)

When property is subject to a lease, in tracking whether a change in ownership occurs, the “owner” of the property is considered to be either the lessee or the lessor depending upon the term of the lease and the point in time of the lease. This is done to identify a

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“primary owner” of the property, so that only a transfer of that person’s interest in the real property will be a change in ownership. Generally when the lease term is for 35 or more years, the lessee’s interest is tracked for change in ownership purposes rather than the actual owner of the property. The interest in property for a 35 year term is considered to be equivalent in value to fee ownership. Generally, with respect to property that is leased, as it relates to this bill, a “change in ownership” occurs

- upon the creation of a leasehold interest for a term of 35 years or more, or
- upon the transfer of a leasehold interest having a remaining term of 35 years or more.

Under existing law, certain property owned and operated by nonprofit organizations for charitable purposes may be exempt from property tax under the “welfare exemption.” (Revenue and Taxation Code Section 214)

To qualify for the welfare exemption, the property must be owned and operated by a qualifying organization that meets all the requirements for exemption. Under existing law, one condition is that the organization *owns* the property. Property that is leased or rented by an otherwise qualified applicant is ineligible for welfare exemption. Thus, while existing law provides that a 35-year lease is equivalent in value to fee ownership for change in ownership reassessment purposes, it does not similarly provide that it is “ownership” for purposes of the welfare exemption.

Proposed Law

This bill would add Section 236.5 to the Revenue and Taxation Code to provide that any otherwise taxable interest in real property, leased for an original term of 35 years or more and used exclusively by the lessee for the operation of a public park, is, during the term of the lease, within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution, if all of the following conditions are met:

1. The lessee is a charitable foundation that has received a determination that it is a charitable organization as described in Section 501(c)(3) of the Internal Revenue Code.
2. The operation of the public park by the lessee is within the tax exempt purposes of the lessee.
3. The lessee acquired the leasehold in the property by means of a charitable donation.
4. Under the terms of the lease, the lessee will acquire the entire ownership interest in the property at the end of the lease term.

Background

Wynmark Company and its partners constructed a public park, Lester A. & Viola S. Girsh Park in Goleta, California (<http://www.girshpark.org>) and donated it to a nonprofit foundation, the Camino Real Park Foundation, which was established to operate the

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park. The company currently has a long term lease in the land and will acquire fee ownership of the land in 20 years, at which point it will donate the full fee simple ownership of the park and land to the nonprofit foundation. Currently, the foundation has a 70-year lease in the park but will acquire full ownership of the park before the end of the lease in another 20 years. The transfer of the leasehold interest from Wynmark Park to the foundation was a change in ownership of the property requiring reassessment to current fair market value since the term of the lease exceeded 35 years.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the committee to provide an exemption for a public park that is leased to a nonprofit organization. Under current law, the park will not be exempt from property tax under the welfare exemption until the nonprofit organization acquires fee ownership of the property in 20 years.
2. **Under the circumstances outlined in this bill, property tax law considers a nonprofit organization to be the “owner” of the property for change in ownership purposes, but not for welfare exemption.** Girsh Park in Goleta is a community park, currently leased to a nonprofit foundation formed to operate the park, as explained under Background. The property was recently reassessed to current fair market value as a “change in ownership” because the lease term exceeded 35 years. For change in ownership purposes, the foundation was considered to be the “primary owner” of the property. But the nonprofit foundation cannot receive the welfare exemption on the property, because under those provisions of law, it is not the “owner” of the property. The foundation will acquire “fee” ownership of the property in about 20 years. Once fee ownership is acquired, the property would be eligible for exemption from property taxes under existing law.
3. **Generally, property that is leased cannot qualify for the welfare exemption.** Section 3 and Section 4 of Article XIII of the California Constitution differ with respect to the ownership requirement for certain property tax exemptions therein provided. Section 3 exempts property *used* (i.e. ownership is not required) for (1) libraries and museums that are free and open to the public, (2) public schools, colleges, and universities, and (3) religious worship. Section 4 exempts property *used* exclusively for religious, hospital and charitable purposes *and owned or held in trust* by nonprofit entities organized and operated for those purposes. The terms “own,” “held in trust,” and “used” are not defined in the constitution. Thus, it could be argued that the Legislature could define “ownership” for the welfare exemption to include this type of long term lease arrangement as has been done for change in ownership purposes.
4. **Existing law provides a similar exception for long-term leases of property used for low-income housing.** The provisions proposed by this bill are similar to those of Revenue and Taxation Code Section 236, which exempts property used for rental housing for low-income persons which is leased for a term of 35 years or

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more (or any transfer of such property leased with a remaining term of 35 years or more) when the lessor is not otherwise qualified for the welfare exemption pursuant to Section 214. Section 236 recognizes that the lessor is not qualified for the welfare exemption but has no requirement that the qualifying lessee acquire the fee interest at the end of the lease term.

5. **Most public parks are exempt from property tax because state or local governments own them.** It may become more common for private charitable foundations to operate public parks if government resources cannot fulfill the demand. In the future, where developers are required to set aside open space and public park land as a condition of development approval, local governments may not have the funds needed to maintain them, which could lead to more situations where parks are operated, but not owned, by charitable foundations.
6. **“Public Park” is not defined.** Should it be limited to parks “uniquely of a government character,” as provided in Section 231(b)(4), i.e. a traditional community park, accessible and “free” to the public, to the same extent government owned parks are accessible and free.
7. **Technical consideration.** One condition for the proposed exemption is that “under the terms of the lease, the lessee will acquire the entire ownership interest in the property at the end of the lease term.” However, it appears that the foundation will technically acquire ownership before the end of the lease. If this is the case, perhaps some amendment is needed to include this situation as well, “on or before the end of the lease term.”
8. **Related legislation.** SB 882 (O’Connell) contains provisions very similar to this proposal.

COST ESTIMATE:

The Board would incur some minor, absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE:

Background, Methodology, and Assumptions

Leased Public Parks. Currently, there is only one charitable foundation that appears to qualify under this proposal: Camino Real Park Foundation. This organization is responsible for the operation of Lester A. and Viola S. Girsh Park in Goleta, California. A 70-year leasehold interest was donated to the Foundation for the park. Upon the donor's formal acquisition of the leased property within the next twenty years, actual fee simple ownership will be transferred to the Foundation for \$1.00. The property will then qualify for the welfare exemption because the Foundation will hold fee simple title.

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According to the Santa Barbara County Assessor's Office, the assessed value of the park is \$4.1 million.

Revenue Summary

The initial annual revenue impact from exempting the property from the basic one percent tax rate is \$41,000 (\$4.1 million x .01). It is likely that this loss will grow slightly over time due to the Proposition 13 inflation factor until the fee simple ownership of the subject property is transferred to the Foundation.

Qualifying Remarks

The above estimate applies only to Girsh Park, as mentioned in the background section above. While it is possible that the adoption of this bill could encourage other charitable organizations to engage in similar undertakings, because of the stated limitations in the language of this bill, that likelihood is considered remote.

The remaining provisions of this bill have no revenue impact.

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